

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 214 of 2016

The State Of Chhattisgarh Through - District Magistrate Rajnandgaon
Chhattisgarh ----- **Petitioner**

Versus

1. Sukaluram Tulavi S/o Sanker Tulavi Aged About 35 Years Caste Gond, Agriculture, R/o Village Aamapayli, P.S. Aundhi, Distt. Rajnandgaon Chhattisgarh
2. Sadhuram Kawade S/o Keuram Kawade Aged About 45 Years Caste Gond, Agriculture, R/o Village Aamapayli, P.S. Aundhi, Distt. Rajnandgaon Chhattisgarh
3. Binuram Uraon S/o Turame Uraon @ Banduram Aged About 35 Years Caste Gond, Occupation Agriculture, R/o Village Chhote Aamapayli, P.S. Aundhi, Rajnandgaon, Distt. Rajnandgaon Chhattisgarh ----- **Respondents**

For State/Petitioner : Mr. Ramakant Mishra, Dy. A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order

08/10/2018

Heard.

1. Application for grant of leave to appeal has been filed by the State in the matter of acquittal of respondents vide judgment dated 03.09.2015 passed in Sessions Trial No.44 of 2015 by Additional Sessions Judge, Rajnandgaon.
2. The interference is sought and prayed for on the ground that the evidence of the case brought by the prosecution has not been properly appreciated by the Court below. It is the case of the State that the evidence of Anil Agrawal (PW15) proves the case of the prosecution beyond all doubts.
3. According to the learned State counsel, minor contradictions, omissions have weighed to grant benefit of doubt which otherwise was not available under the law.

4. From the impugned judgment, we find that the prosecution failed to come out with any direct evidence of respondents having assaulted deceased Shatruram. His mother Rakkobai (PW2) has stated that she could not see as to who were the person with whom her son has gone because it was all dark in the night. She has been declared hostile. Other witnesses namely Samaruram (PW3) & Shamsingh (PW7), who are brother of the deceased state that they came to know about the incident from their mother and they have also been declared hostile. Bhukhauram (PW1) has also deposed that he does not know, who assaulted Shatruram. Lalsay (PW6), Bodhanlal (PW11), Basanti Bai (PW12), Somlal (PW13), Joseph (PW14) all have stated that dead body was found near the pond but they do not know who gave assault. So called confession panchnama Ex.P/5 has also not been found proved because the witnesses Mileshwar Singh (PW19), Jairam (PW20) have not supported the case of the prosecution that in their presence, any such confession was given. Otherwise, also a confession given to the police officer is not admissible in evidence. Independent witnesses have turned hostile. Recovery of gun, explosive, banner, poster, torch etc. said to be made from the spot and according to the prosecution, nothing said to be recovered from Suklu. Considering the aforesaid material, learned trial Court having found it to be a case of no evidence has acquitted. As independent witnesses have not supported the case of the prosecution, there is no eyewitness, confession made to the police is not admissible in evidence, learned trial Court has also not relied upon the evidence of the Investigating Officer Anil Agrawal (PW15).

5. It would, thus, be seen that the Trial Court has acquitted the respondents as the prosecution failed to prove any incriminating evidence beyond reasonable doubt and the view taken by the trial Court cannot be said to be so unreasonable, perverse or contrary to incriminating material evidence as to warrant interference. Therefore, application for grant of leave to appeal is rejected.

6. Accordingly, CRMP is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge